

ATTACHMENT A
THE PROPOSED DECISION

BEFORE THE
BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM
STATE OF CALIFORNIA

In the Matter of the Application for Industrial
Disability Retirement of:

Case No. 2014-0980

GWENDOLYN LEWIS-PARKER,

OAH No. 2015060214

Respondent,

and

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION
PAROLES AND COMMUNITY
SERVICES,

Respondent.

PROPOSED DECISION

Debra D. Nye-Perkins, Administrative Law Judge, Office of Administrative Hearings, heard this matter on October 22, 2015, in San Diego, California.

Elizabeth Yelland, Senior Staff Counsel, represented petitioner Anthony Suine, Chief, Benefit Services Division, Board of Administration, California Public Employees' Retirement System (CalPERS), State of California.

Gwendolyn Lewis-Parker, respondent, failed to appear at the hearing. Complainant established compliance with Government Code sections 11505 and 11509, and the hearing proceeded as a default pursuant to Government Code section 11520.

The matter was submitted on October 22, 2015.

CALIFORNIA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM
FILED Nov 20, 20 15
C. Bodily

ISSUE

When she filed her disability application, was Ms. Lewis-Parker permanently disabled or incapacitated from performing the regular and customary duties of a Parole Agent due to her psychological condition?

FACTUAL FINDINGS

Procedural Background

1. On December 26, 2014, complainant filed the Statement of Issues while acting in his official capacity.

2. Ms. Lewis-Parker was employed as a Parole Agent by the California Department of Corrections and Rehabilitation Paroles and Community Services. By virtue of her employment, Ms. Lewis-Parker is a state safety member of CalPERS subject to Government Code section 21151.

3. On October 10, 2011, Ms. Lewis-Parker signed and filed, an application for industrial disability retirement based on psychological (PTSD, Major Depression) conditions. CalPERS denied her application for industrial disability and notified her of that decision by letter dated May 27, 2014.

4. On October 10, 2011, Ms. Lewis-Parker signed and filed her application for service retirement. Ms. Lewis-Parker retired from service effective October 1, 2011, and has been receiving her service retirement allowance from that date.

5. By letter dated July 20, 2014, Ms. Lewis-Parker filed a timely appeal of CalPERS's decision to deny her application for industrial disability. This hearing followed.

The Usual Duties of a Parole Agent

6. Two documents describing the usual duties required of a Parole Agent were received in evidence. One of those documents, entitled "Parole Agent Essential Functions," described both the physical and mental requirements of the position.

7. Parole Agents must be able to perform all of the critical physical and mental tasks listed in the documents. The required tasks relevant to this matter, based on the testimony and reports of the medical expert, were: the mental capacity to be aware/alert in their observation/identification of security risks, including psychological manipulation from parolees and aggressive or violent behavior of parolees; the mental capacity to judge an emergency situation, determine the appropriate use of force, and carry out that use of force; the mental ability to recall an incident in order to accurately document the incident in writing; the ability to assess, supervise and guide an adult parolee population, including

persuading a parolee to modify and change attitudes and behavior; and providing guidance in areas such as employment, housing, medical care, counseling, education, and social activities; the ability to testify at hearings, recall a case, understand a question and answer questions.

Examination by Matthew Carroll, M.D.

8. CalPERS retained Matthew Carroll, M.D. to examine Ms. Lewis-Parker to determine whether she could perform the duties of a Parole Agent. Dr. Carroll is Board Certified in Psychiatry with a subspecialty in Forensic Psychiatry. He is licensed as a medical doctor in California, and certified as an expert reviewer by the Medical Board of California. He has conducted numerous evaluations for CalPERS to determine whether an employee was substantially incapacitated from performing his/her duties.

As part of his assessment of Ms. Lewis-Parker, Dr. Carroll reviewed the two documents related to the job duties of a Parole Agent, as well as medical reports for Ms. Lewis-Parker provided by CalPERS.

On October 30, 2013, Dr. Carroll conducted an Independent Medical and Psychiatric Evaluation of Ms. Lewis-Parker. He interviewed Ms. Lewis-Parker and obtained information regarding her background history, educational history, occupational history, relationship history, current medications, current activities, alcohol and drug history, legal history, medical history, current psychiatric symptoms, and psychiatric history. He also obtained a mental status examination and provided his diagnostic impressions of Ms. Lewis-Parker. He concluded that she suffered from Post-traumatic Stress Disorder (PTSD) and recurrent Major Depression. Ms. Lewis-Parker was not being treated with either medication or therapy for those conditions at the time Dr. Carroll examined her. However, she had received previous treatment by a psychiatrist from 2000 to 2002 for depression and again beginning in 2009 after a work-related incident and continuing until about 2012. Dr. Carroll summarized his findings in his report dated November 4, 2013.

Based on his exam of Ms. Lewis-Parker, Dr. Carroll concluded that she was suffering from untreated symptoms of depression and PTSD and, at that time, she did not have the mental capacity to be aware and alert enough to adequately identify a security risk from a parolee, did not have the capacity to judge an emergency situation, and was not able to assess, supervise, and guide adult parolee populations or testify at hearings. He opined that Ms. Lewis-Parker was substantially incapacitated. He believed that her disability began in February 2009 at the time of her work-related incident. He opined that Ms. Lewis-Parker's incapacity was temporary with an expected duration of less than six months if she received psychiatric and psychological treatment. Dr. Carroll testified that Ms. Lewis-Parker's condition was treatable with medication and with therapy.

Dr. Carroll explained that the work-related incident in February 2009 involved a parolee who Ms. Lewis-Parker was assigned to pick-up from jail to bring to a parole board location. After she checked the parolee out of the Los Angeles jail and put him in the front

passenger seat of her car, she began driving to the destination. During the trip, the parolee asked her, "Where is my check?" and became agitated. She told him that she did not know what he was talking about, and he then put his hand against her head and said "I'll blow your mother-fucking brains out just keep driving." Ms. Lewis-Parker pulled into a Jack-in-the-Box restaurant and called for help. Another parole agent came with a psychiatrist to attempt to control the parolee. Eventually Ms. Lewis-Parker and the other parole agent drove the parolee to a hospital where he received psychiatric treatment. Dr. Carroll opined that this incident led to Ms. Lewis-Parker's PTSD and the return of her previously treated depression.

9. After Dr. Carroll provided his report to CalPERS, he was asked to clarify it by answering the following question:

Based solely on your current examination and record review (not considering anticipated response to treatment) is the incapacity permanent or temporary?

On January 9, 2014, Dr. Carroll provided a letter to CalPERS answering the question with the following response: "The incapacity is temporary."

In a follow-up letter dated February 6, 2014, CalPERS asked Dr. Carroll to provide information regarding the duration of Ms. Lewis-Parker's temporary incapacity. In response he informed CalPERS that the duration would be less than six months.

Evaluation

10. The evidence established that Ms. Lewis-Parker was temporarily incapacitated from the performance of the usual job duties of a Parole Agent as of October 30, 2013, for a period of less than six months. This conclusion is based upon Dr. Carroll's opinion as a result of his independent psychological examination of Ms. Lewis-Parker on that date.

Ms. Lewis-Parker failed to appear at the hearing to provide any evidence on her behalf to meet her burden to prove that she is permanently disabled or disabled for an uncertain or extended duration and that she is eligible for an industrial disability retirement.

LEGAL CONCLUSIONS

Burden of Proof

1. Ms. Lewis-Parker has the burden of proof to establish that CalPERS' determination that she is not eligible for industrial disability retirement was incorrect and that she is still incapacitated from performance of her duties as a Parole Agent. (Evid. Code, § 500.) Ms. Lewis-Parker did not meet her burden to show that she is permanently incapacitated or incapacitated for an undetermined duration.

2. The Public Employees' Retirement Law (Retirement Law) governs disability retirement and reinstatements and grants sole jurisdiction to CalPERS to make such determinations. (See Gov. Code, §§ 20026, 20125, 21154, 21156, 21190, 21192 and 21193.)

Applicable Statutes Regarding Applications for Disability Retirement

4. Government Code section 20026 provides in part:

“Disability” and “incapacity for performance of duty” as a basis of retirement, mean disability of permanent or extended and uncertain duration, as determined by the board . . . on the basis of competent medical opinion.

5. Government Code section 21151 provides in part:

(a) Any patrol, state safety, state industrial, state peace officer/firefighter, or local safety member incapacitated for the performance of duty as the result of an industrial disability shall be retired for disability, pursuant to this chapter, regardless of age or amount of service. . . .

6. Government Code section 21152 provides in pertinent part:

Application to the board for retirement of a member for disability may be made by:

[¶] . . . [¶]

(c) The governing body, or an official designated by the governing body, of the contracting agency, if the member is an employee of a contracting agency.

(d) The member or any person in his or her behalf.

7. Government Code section 21154 provides in part:

The application shall be made only (a) while the member is in state service On receipt of an application for disability retirement of a member . . . the board shall, or of its own motion it may, order a medical examination of a member who is otherwise eligible to retire for disability to determine whether the member is incapacitated for the performance of duty. . . .

8. Government Code section 21156 provides in part:

(a)(1) If the medical examination and other available information show . . . that the member in the state service is incapacitated physically or mentally for the performance of his or her duties and is eligible to retire for disability, the board shall immediately retire him or her for disability

(2) In determining whether a member is eligible to retire for disability, the board . . . shall make a determination on the basis of competent medical opinion

Case Law Defining Disability Retirement

9. “Incapacitated for the performance of duty,” means the “substantial inability of the applicant to perform [her] usual duties.” (*Mansperger v. Public Employees’ Retirement System* (1970) 6 Cal.App.3d 873, 876.)

Cause Exists to Deny Ms. Lewis-Parker’s Application

10. Cause exists to conclude that Ms. Lewis-Parker does not have a disability of permanent or extended or uncertain duration. As such, she does not qualify for an industrial disability retirement and her application is denied.

ORDER

CalPERS’s determination that Gwendolyn Lewis-Parker does not have a disability of permanent or extended and uncertain duration that would prevent her from performance of her duties as a Parole Agent is affirmed.

DATED: November 19, 2015

Debra D. Nye-Perkins
by Robert Walker

DEBRA D. NYE-PERKINS
Administrative Law Judge
Office of Administrative Hearings